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Viral DRM LLC

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

VIRAL DRM LLC,

Plaintiffs,

v.

YOUTUBE UPLOADERS LISTED ON  
SCHEDULE A,

Defendants.

CASE NO.: 3:23-cv-04300

**PLAINTIFF’S APPLICATION FOR ENTRY  
OF TEMPORARY RESTRAINING ORDER,  
PRELIMINARY INJUNCTION AND  
ORDER RESTRAINING TRANSFER OF  
ASSETS AND INCORPORATED  
MEMORANDUM OF LAW**

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR RESPECTIVE  
COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT Plaintiff Viral DRM, LLC (“Viral DRM” or “Plaintiff”) hereby requests that this Court, *ex parte*, for an order entering a temporary restraining order, preliminary injunction and order restraining transfer of assets.

This application is made on the grounds that: Defendants’ unlawful activities have deprived and continue to deprive Plaintiff of its right to determine the manner in which its copyrights are presented to the public. Defendants have and continue to wrongfully trade and capitalize on Plaintiff’s copyrights. By their activities, Defendants are defrauding Plaintiff, certain non-party businesses, and the consuming public for their own benefit.

This application will be based on this Notice of Application, Memorandum of Points and Authorities, and the Declarations of Matthew Rollin and Brandon Clement filed herewith.

1 DATED: August 23, 2023

/s/ Matthew L. Rollin

MATTHEW L. ROLLIN

**SRIPLAW**

Attorneys for Plaintiff Viral DRM, LLC

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1 Plaintiff VIRAL DRM LLC by and through undersigned counsel, hereby moves this Court  
2 for a temporary restraining order, and upon expiration of the temporary restraining order, a  
3 preliminary injunction against Defendants, and an order restraining transfer of assets, pursuant to 17  
4 U.S.C §§ 502, 512(f), 1203, Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a), and this  
5 court's inherent authority, and in support thereof states as follows:

## 6 I. INTRODUCTION

7 Plaintiff, Viral DRM, LLC, is a syndicator of award-winning videographic content created by  
8 talented videographers who travel around the globe in pursuit of Mother Nature's wrath. Plaintiff's  
9 videographers and photographers cover weather extremes from tornadoes, hurricanes, flooding,  
10 blizzards, volcanoes and climate change impacts.

11 Defendants are foreign YouTube uploaders who operate popular and financially lucrative  
12 YouTube channels. Defendants are physically located outside the United States living in countries  
13 with lax copyright protection and weak legal regimes. Defendants downloaded copies of plaintiff's  
14 copyrighted videographic works from the internet and then uploaded plaintiff's works to their  
15 YouTube channels where they placed advertising on plaintiff's videos to earn advertising revenue,  
16 grow their YouTube channel subscriber base, and engage in other money-making business activities  
17 using plaintiff's copyrighted media content.

18 Plaintiff discovered the unauthorized use of its works by defendants. The works pirated by  
19 defendants on YouTube are listed on Schedule A to the complaint. Upon discovering the defendants'  
20 unauthorized use, plaintiff submitted DMCA take-down notices to YouTube that are attached as  
21 Exhibit 3 to the complaint. Defendants responded to plaintiff's DMCA notices with false  
22 counter notices attached as Exhibit 4 to the complaint. Defendants' false counter notices claimed that  
23 defendants owned the rights to the plaintiff's works or asserted other false claims to lawful use in  
24 bad faith. The statements defendants made in the counter notices were materially false and  
25 defendants lacked a subjective good faith belief in the false statements contained therein when they  
26 made the false statements.

27 The Copyright Act allows plaintiff to obtain an accounting and to recover, as an equitable  
28 remedy, the actual damages suffered as result of the infringement and any additional profits of the

defendants that are attributable to the infringement and are not taken into account in computing the actual damages. See 17 U.S.C. § 504(b), 512(f), 1203. This disgorgement remedy will be worthless unless the funds defendants' earned from advertising placed on their videos on their lucrative YouTube channels are frozen. Plaintiff has good reason to believe these foreign defendants will hide or transfer their ill-gotten advertising revenue beyond the jurisdiction of this Court unless the payments made to them by Google and the funds in their accounts are restrained.

To preserve the disgorgement and accounting remedy, Plaintiff seeks an order restraining defendants' assets, including specifically (1) funds paid to or due in the future to the defendants for YouTube advertising revenue within the control of YouTube and Google LLC, and (2) funds in the possession of or transmitted through electronic funds transfer services, foreign banks and domestic banks, payment service providers and money transfer services that defendants use to transfer funds to themselves or others from their Google AdSense accounts.

## II. STATEMENT OF FACTS

### A. **BACKGROUND ON VIRAL DRM AND ITS CREATORS AND THEIR COPYRIGHTED WORKS**

1. Viral DRM is a Mississippi limited liability company that syndicates and licenses video content, especially content depicting extreme weather events. Brandon Clement is the CEO of Viral DRM. (Clement Decl. ¶ 1).

2. Clement is a storm chaser specializing in shooting viral video for broadcast and distribution. Along with his wife Mandi who is also a storm chaser, Clement has captured many tornadoes, hurricanes and other severe weather events on video. In 2017, Clement dedicated himself full-time to storm videography. That same year he founded WXchasing, his production company that creates the videographic work that Viral DRM syndicates and licenses. Clement also operates Live Storms Media, the popular YouTube channel where WXchasing and Viral DRM's videos are published. Clement's success in storm chasing and videography has earned WXChasing and Live Storms Media over 350,000 followers on YouTube. His companies owns or exclusively license more than 125 million minutes of video, and has received well over 15 billion views in the US across social media platforms, digital, apps and broadcast. (Clement Decl. ¶¶ 2-6).



1           3.       Viral DRM represents Clement’s work and the work of numerous other award-  
2 winning videographers and storm chasers who make their living from their creativity and the risks  
3 they take shooting extreme events around the globe. The Live Storms Media YouTube channel and  
4 Facebook page are extremely popular destinations for viewers seeking out extreme weather event  
5 footage. (Clement Decl. ¶¶ 9-10).

6           4.       The works at issue in this case are listed on Schedule A to the complaint. All the  
7 works are original works of authorship created by Clement or one of the other authors/creators listed  
8 on Schedule A. All the works are exclusively licensed to Viral DRM for distribution and syndication  
9 pursuant to written agreements that provide Viral DRM with the necessary rights to sue for the  
10 infringements at issue in this case. All the works at issue in this case listed on Schedule A contained  
11 watermarks and embedded metadata copyright management information identifying them as the  
12 property of WXchasing’s Live Storms Media business affiliated with Viral DRM. (Clement Decl. ¶  
13 11).

14           5.       The plaintiff or its affiliated companies display videos of extreme weather events that  
15 are frequently copied, downloaded, and reuploaded by infringers. Plaintiff is a popular and frequent  
16 source of footage of weather events that cannot be obtained elsewhere. Plaintiff’s videos are a  
17 frequent target for infringers and pirates. (Clement Decl. ¶ 16).

18           6.       All the works at issue in this case are valuable for displaying on YouTube and  
19 Facebook. All the works at issue show dramatic weather events that make for compelling and  
20 interesting viewing by interested viewers worldwide. All the works at issue also can be used to earn  
21 money from advertising on YouTube. (Clement Decl. ¶ 17).

22           **B.       DEFENDANTS’ ILLEGAL DOWNLOADING, UPLOADING, AND FALSE**  
23                           **COUNTERNOTICES**

24           7.       The defendants listed on Schedule A are YouTube uploaders whose identities were all  
25 falsified on YouTube. The true identities of the defendants were obtained by subpoena from Google,  
26 LLC pursuant to 17 U.S.C. § 512(h) in the companion miscellaneous case 2023-mi-00012. Google,  
27 LLC’s response to the subpoena issued by this court in the companion miscellaneous case 2023-mi-  
28

1 00012 revealed that the identifying information defendants provided in their counternotices attached  
2 to the complaint as Exhibit 4 was false information. (Clement Decl. ¶ 13).

3 8. Defendants operate extremely popular and valuable YouTube channels with over  
4 100,000 subscribers, numerous videos, and videos with over 100,000 views or more. Defendants  
5 earn significant revenue from the display of pirated video content. (Clement Decl. ¶ 14).

6 9. The defendants listed on Schedule A had access to and downloaded Viral DRM's  
7 copyrighted works from Viral DRM's affiliated Live Storms Media YouTube channels or Facebook  
8 pages online. It is easy to download videos from YouTube and Facebook; there are numerous free  
9 and low-cost tools available online that a downloader can use to copy and download video content.  
10 Just search "download YouTube videos" on Google. These tools are easy to find and they make  
11 copyright infringement easy and frictionless for video pirates. (Clement Decl. ¶ 15).

12 10. The defendants identified on Schedule A to the complaint each infringed at least three  
13 of Viral DRM's copyrighted works as shown on Schedule A. The defendants identified on Schedule  
14 A all downloaded and copied Viral DRM's copyrighted works identified on Schedule A. The  
15 defendants identified on Schedule A all edited, cropped or altered Viral DRM's copyrighted works  
16 shown on Schedule A. When they edited Viral DRM's copyrighted works shown on Schedule A, the  
17 defendants removed or altered Viral DRM's copyright management information watermarks and  
18 CMI metadata. The defendants listed on Schedule A to the complaint then reuploaded the resulting  
19 videos they created using Viral DRM's copyrighted works to their YouTube channels and enabled  
20 advertising on them to earn monetization revenue. When the defendants reuploaded the videos they  
21 created using Viral DRM's copyrighted works they falsely claim to be the creators or owners of the  
22 videos on their channels. (Clement Decl. ¶ 19).

23 11. All the defendants listed on Schedule A to the complaint monetized the videos they  
24 stole from Viral DRM. All the defendants enabled advertisements to be displayed on their videos  
25 allowing them to earn money through the YouTube Partner Program. (Clement Decl. ¶ 15).

26 12. All of the works at issue in this case listed on Schedule A to the complaint were  
27 discovered on the defendants' YouTube channels in videos that the defendants uploaded to  
28

1 YouTube. Some of the videos belonging to plaintiff were edited into a larger video compilation by  
2 defendants. (Clement Decl. ¶ 21).

3 13. By uploading content to YouTube, you are implicitly declaring that you have the  
4 necessary rights or permissions to distribute and share that content. YouTube's Terms of Service  
5 state that users must only upload content to which they have the necessary rights. This means that  
6 you should not upload copyrighted material unless you have obtained permission from the copyright  
7 holder or your use of the material falls within a legally recognized exception, such as fair use. If a  
8 video receives a copyright claim or takedown notice, YouTube requires the user to provide evidence  
9 that the user has the necessary rights to use the copyrighted material. (Clement Decl. ¶ 19).

10 14. After discovering the videos listed on Schedule A to the complaint on the dates  
11 indicated in Exhibit 2, Viral DRM submitted DMCA takedowns to YouTube which are attached to  
12 the complaint as Exhibit 3. In response to all the takedowns submitted, the defendants listed on  
13 Schedule A all submitted false and misleading counter notices in which they claimed to have the  
14 rights to display Viral DRM's videos on YouTube. (Clement Decl. ¶ 26).

15 15. None of the defendants had authorization from Viral DRM to display its videos. None  
16 of the defendants had valid bases to claim the content was wrongfully removed. None of the  
17 defendants could have had valid good faith beliefs that the material was removed due to a mistake.  
18 (Clement Decl. ¶ 23).

19 16. The defendants' counter notices are not just misleading, they are false and fraudulent.  
20 Several different defendants listed on Schedule A to the complaint gave the same contact  
21 information even though they are different individuals who reside in different countries. (Compare  
22 Exhibit 4 to the complaint to Schedule A). Several different defendants also provided the same false  
23 and bad faith explanations in their counter notices why they claimed that they had valid bases to  
24 claim that the content identified in Viral DRM's DMCA notices was wrongfully removed. This  
25 indicates that the defendants are acting in concert with each other in operating their YouTube  
26 channels and pirating Viral DRM's video content. (Clement Decl. ¶ 24).

27 17. The defendants listed on Schedule A to the complaint have earned hundreds of  
28 thousands of dollars from monetizing pirated videos including Viral DRM's videos. The defendants

1 had no right to earn money from pirated content. In order to obtain an accounting and disgorgement  
2 of the defendants' profits from their illegal piracy of Viral DRM's videos, Viral DRM needs to  
3 obtain information from YouTube (Google) on the amount of money the defendants earned in  
4 advertising revenue from videos posted on their YouTube channels. Viral DRM cannot obtain that  
5 information without a court order. (Clement Decl. ¶ 25).

6 18. All of the defendants are located outside of the United States. Defendants will  
7 abscond with their ill-gotten gains from monetizing pirated videos on YouTube unless this Court  
8 orders their Google AdSense accounts frozen and also freezes the defendants' funds transferred from  
9 their Google AdSense accounts in the possession of or transmitted through electronic funds transfer  
10 services, foreign banks and domestic banks, payment service providers and money transfer services  
11 that defendants use to transfer funds to themselves or others from their Google AdSense accounts.  
12 (Clement Decl. ¶ 28).

### 13 **III. ARGUMENT**

#### 14 **A. A TEMPORARY RESTRAINING ORDER IS ESSENTIAL TO PREVENT** 15 **IMMEDIATE INJURY**

16 A temporary restraining order may be granted without written or oral notice where "specific  
17 facts in an affidavit . . . clearly show that immediate and irreparable injury, loss, or damage will  
18 result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b).  
19 Entry of a TRO is warranted here. Plaintiff demonstrated that (1) defendants engaged in copyright  
20 infringement and piracy of plaintiff's videos on YouTube; (2) defendants monetized their pirated  
21 videos and earned thousands of dollars in advertising revenue from video piracy; (3) defendants  
22 responded to DMCA takedown notices with false and misleading counternotices in which they  
23 falsely and in bad faith claimed to have the rights to display Viral DRM's videos on YouTube; (4)  
24 defendants all gave false contact information in their counternotices to avoid detection and discovery  
25 of their true identities; (5) defendants all reside outside the United States in countries with weak  
26 legal regimes and copyright protections where pursuing defendants for recovery of plaintiff's  
27 damages will be impossible.  
28

1 The entry of a Temporary Restraining Order would immediately preserve the *status quo* and  
2 freeze the defendants' funds and YouTube accounts and channels until such time as a hearing can be  
3 held. Absent a TRO, defendants can and, based upon plaintiff's counsel's past experience, will  
4 significantly alter the *status quo* before the Court can determine the parties' respective rights.

5 The YouTube channels at issue are under defendants' complete control, and defendants can  
6 change ownership, transfer funds, change payment accounts, and transfer assets and ownership of  
7 their YouTube channels at a moment's notice. (Rollin Decl. ¶ 7). Defendants can easily and quickly  
8 transfer and secret the funds sought to be restrained and thereby thwart the Court's ability to grant  
9 meaningful accounting and disgorgement of profits relief. (*Id.*)

10 Defendants' assets will be unavailable for recovery or an accounting of profits without the  
11 entry of a TRO. The business of infringers is built on deliberate misappropriation of rights and  
12 property belonging to others. Proceeding on an *ex parte* basis is a well-established practice.

13 **B. STANDARD FOR TEMPORARY RESTRAINING ORDER AND**  
14 **PRELIMINARY INJUNCTION.**

15 In the Ninth Circuit, "[t]he standard for issuing a temporary restraining order is essentially  
16 the same as that for issuing a preliminary injunction." *Beaty v. Brewer*, 649 F.3d 1071 (9th Cir.  
17 2011). *See also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.  
18 2001).

19 "To be entitled to injunctive relief, a movant must demonstrate (1) that he is likely to succeed  
20 on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3)  
21 that the balances of equities tips in his favor, and (4) that an injunction is in the public interest."  
22 *Beaty*, 649 F.3d at 1071 citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008).

23 "A preliminary injunction may also be appropriate if a movant raises 'serious questions  
24 going to the merits' and the balance of hardships ... tips sharply towards' it, as long as the second  
25 and third *Winter* factors are satisfied." *Disney Enters. v. VidAngel, Inc.*, 869 F.3d 848, 856-57 (9th  
26 Cir. 2017). "Likelihood of success on the merits 'is the most important' *Winter* factor." *Disney*  
27 *Enters*, 869 F.3d at 856 quoting *Garci v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).  
28

1 **1. Probability of Success on the Merits of Plaintiff's Claims.**

2 **a) Likelihood of success on copyright infringement**

3 A copyright infringement action requires a plaintiff to prove (1) ownership of a valid  
4 copyright, and (2) actionable copying by the defendant. *Feist Publications, Inc. v. Rural Tel. Serv.*  
5 *Co.*, 499 U.S. 340, 361 (1991). Plaintiff has established it is the owner of valid copyrights in the  
6 works listed on Schedule A to the complaint. Plaintiff registered the works at issue that are the  
7 subject of the copyright claim in the complaint with the Copyright Office as shown Schedule A, and  
8 true and correct copies of the copyright registrations are attached to plaintiff's complaint as Exhibit  
9 2. Plaintiff's valid copyright registrations satisfies the first prong of the test for copyright  
10 infringement.

11 Plaintiff has also established defendants' actionable copying based on the testimony in  
12 plaintiff's declaration and the schedule thereto showing the locations in the defendants' videos  
13 where plaintiff's works are reproduced. (Clement Decl. ¶ 21). Therefore, a likelihood of success on  
14 plaintiff's copyright infringement claim is established.

15 **b) Likelihood of success on claims of misrepresentation and fraud**  
16 **under 17 U.S.C. § 512(f)**

17 This section provides:

18 (f) Misrepresentations. Any person who knowingly materially misrepresents under  
19 this section—

20 (1) that material or activity is infringing, or

21 (2) that material or activity was removed or disabled by mistake or misidentification,  
22 shall be liable for any damages, including costs and attorneys' fees, incurred by the  
23 alleged infringer, by any copyright owner or copyright owner's authorized licensee,  
24 or by a service provider, who is injured by such misrepresentation, as the result of the  
service provider relying upon such misrepresentation in removing or disabling access  
to the material or activity claimed to be infringing, or in replacing the removed  
material or ceasing to disable access to it.

25 17 U.S.C. § 512.

26 To state a claim under this provision, a plaintiff must allege that a "‘takedown’ actually  
27 occurred"—that is, that 'the service provider . . . ‘remov[ed] or disabl[ed] access’ to the allegedly  
28 infringing material." *Opinion Corp. v. Roca Labs, Inc.*, No. 8:15-CV-811-17AEP, 2016 WL

6824383, at \*3 (M.D. Fla. Nov. 17, 2016) (quoting 17 U.S.C. § 512(f)); *see also Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, 790 F. Supp. 2d 1024, 1029 (N.D. Cal. 2011) (dismissing plaintiff's Section 512(f) claim "with prejudice because no takedown occurred").

Most of the cases applying § 512(f) apply subsection (1) of the statute relating to false takedown notices. However, cases applying subsection (2) confirm that “subsection (2) refers to misrepresentations in a put-back notice.” *Tierra Caliente Music Group v. Ser-Ca Discos*, No. 7:18-CV-2522019, U.S. Dist. LEXIS 241090, 2019 WL 13109708 (S.D. Tex. Aug. 14, 2019) (motion for summary judgment on claim of violation of § 512(f) in a counternotice denied); *Handshoe v. Perret*, 270 F. Supp. 3d 915 (S.D. Miss. 2017) (motion to dismiss claim of violation of § 512(f) in a counternotice denied). See also generally *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1151 (9th Cir. 2015) (discussing DMCA’s “put-back” procedures).

Here, plaintiff has demonstrated that the defendants lied in their counternotices submitted pursuant to the DMCA put-back procedures. Defendants’ counternotices were false and fraudulent. Several different defendants gave the same contact information in their counternotices even though they are different individuals who reside in different countries. Several different defendants also provided the same false and bad faith explanations in their counternotices. Even though the applicable bad faith standard is a high standard, the defendants clearly violated it here.

**c) Likelihood of success on claims of CMI removal and falsification under 17 U.S.C. § 1202**

To establish a claim of violating Section 1202(a), plaintiff must prove that defendants “knowingly and with the intent to induce, enable, facilitate, or conceal infringement—provide[d] copyright management information that is false.” 17 U.S.C. § 1202(a).

To establish a claim of violating Section 1202(b), plaintiff must prove that defendants “intentionally remove[d] or alter[ed] any copyright management information...having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement.” 17 U.S.C. § 1202(b).

Copyright management information (“CMI”) includes visible CMI like watermarks and invisible CMI like metadata embedded in the works. See *Victor Elias Photography, LLC v. ICE*



1 *Portal, Inc.*, 43 F.4th 1313, 1316 (11th Cir. 2022); 17 U.S.C. § 1202(c). All the works at issue in this  
 2 case listed on Schedule A contained watermarks and embedded metadata copyright management  
 3 information identifying them as the property of WXchasing’s Live Storms Media business affiliated  
 4 with Viral DRM. (Clement Decl. ¶ 17).

5 Plaintiff demonstrated a likelihood of success that defendants violated both § 1202(a) and  
 6 (b). The defendants identified on Schedule A all edited, cropped or altered Viral DRM’s copyrighted  
 7 works shown on Schedule A. When they edited Viral DRM’s copyrighted works shown on Schedule  
 8 A, the defendants removed or altered Viral DRM’s copyright management information watermarks  
 9 and CMI metadata. The defendants then reuploaded the resulting videos they created using Viral  
 10 DRM’s copyrighted works to their YouTube channels and enabled advertising on them to earn  
 11 monetization revenue. When the defendants reuploaded the videos they created using Viral DRM’s  
 12 copyrighted works they falsely claim to be the creators or owners of the videos on their channels.  
 13 (Clement Decl. ¶ 19).

## 14 **2. Plaintiff is Suffering Irreparable Injury.**

15 A copyright holder possesses “the right to exclude others from using his property.” *eBay Inc.*  
 16 *v. MercExchange, L.L.C.*, 547 U.S. 388, 392 (2006) (citing *Fox Film Corp. v. Doyal*, 286 U.S. 123  
 17 (1932)). Defendants’ infringing conduct deprives Plaintiff of control over his exclusive copyright  
 18 rights, causing irreparable harm. *Salinger v. Colting*, 607 F.3d 68, 82 (2d Cir. 2010) (holding  
 19 violation of copyright owner’s “right to exclude” renders monetary remedies inadequate in a wide  
 20 range of circumstances) (quoting *eBay*, at 395). These harms are notoriously difficult to quantify,  
 21 and accordingly are considered irreparable. “[A] presumption of irreparable injury arises if the  
 22 plaintiff is able to show a likelihood of success on the merits of its copyright infringement claim.”  
 23 *Cadence Design Sys. v. Avant! Corp.*, 125 F.3d 824, 826-27 (9th Cir. 1997).

24 Defendants blatantly copied plaintiff’s works. Defendants downloaded, edited, and  
 25 reuploaded plaintiff’s works to YouTube. Defendants stripped out and edited out plaintiff’s CMI in  
 26 the process. When plaintiff notified YouTube of the infringement, defendants submitted false  
 27 counter notices to put the content back up. Only because plaintiff filed this lawsuit did the video  
 28 piracy committed by defendants stay off YouTube.



1 Defendants' actions are in total disregard for plaintiff's right to exclude them from using its  
2 works and cause plaintiff irreparable harm to its efforts to monetize and profit from its works. Every  
3 time defendants pirate and upload another of plaintiff's videos, plaintiff suffers a direct loss from  
4 lost licensing fees and uncontrolled distribution of plaintiff's content that monetary damages cannot  
5 adequately compensate for because they fail to address the loss of control over plaintiff's intellectual  
6 property and goodwill.

7 Overall, unauthorized YouTube uploads of copyright infringing videos have significantly  
8 harmed plaintiff by undermining their revenue streams, diluting their brand and reputation,  
9 fragmenting their audience, compromising creative control, and imposing legal complexities and  
10 costs. These damages are neither calculable nor precisely compensable.

### 11 **3. The Balance of Hardship Tips Sharply in Plaintiff's Favor.**

12 Because defendants are engaged in infringement, "the only hardship [they] will suffer as a  
13 result of an injunction is court-ordered compliance with the copyright laws." *Adobe Systems, Inc. v.*  
14 *Brenengen*, 928 F. Supp. 616, 618 (E.D.N.C. 1996). In other copyright cases, the Courts have ruled  
15 that the evidence of irreparable harm to plaintiff far outweighs the harm that a preliminary injunction  
16 may cause Defendants. *CB Fleet Co., Inc. v. Unico Holdings, Inc.*, 510 F. Supp. 2d 1078, 1083 (S.D.  
17 Fla. 2007) (holding a company cannot build a business on infringements and then argue that  
18 enforcing the law will cripple that business).

19 Defendants will suffer no legitimate hardship in the event a temporary restraining order is  
20 issued because defendants have no right to engage in their present infringing activities.

### 21 **4. The Relief Sought Serves the Public Interest.**

22 "[T]he public interest nearly always weighs in favor of protecting property rights in the  
23 absence of countervailing factors, especially when the patentee practices his inventions." *Apple Inc.*  
24 *v. Samsung Elecs. Co.*, 809 F.3d at 647. The public also has a strong interest in protecting the rights  
25 of a trademark holder. *Go Daddy Operating Co., LLC v. Ghaznavi*, 2018 U.S. Dist. LEXIS 33002, at  
26 \*39 (N.D. Cal. Feb. 28, 2018).

27 Furthermore, the public interest favors entry of a preliminary injunction to protect the  
28 consumer from being defrauded and misled by infringement. *Id.*

**C. The Equitable Relief Sought is Appropriate.**

17 U.S.C §§ 502(a), 512(f), and 1203, authorize any courts having jurisdiction to grant temporary injunctions on such terms as it may deem reasonable to prevent or restrain further infringement of copyright or violations of other applicable rights.

**1. Entry of an Order Immediately Enjoining Defendants' Unauthorized and Unlawful Use of Plaintiff's Copyrights is Appropriate.**

Plaintiff requests an order requiring defendants immediately cease all uses of the works listed on Schedule A to the complaint and any other of plaintiff's works. This relief is necessary to stop the ongoing harm to plaintiff's copyrights and goodwill and to prevent defendants from continuing to profit from their unlawful use of plaintiff's intellectual property rights.

Immediate injunctive relief in similar cases involving the unauthorized use of infringing intellectual property has been authorized<sup>1</sup>.

**2. Entry of an Asset Freeze Order Prohibiting Transfer of the Defendants' YouTube Channels, Defendants' AdSense Accounts, and Defendants' Funds Held in their AdSense Accounts and Associated Accounts During the Pendency of this Action is Appropriate.**

To preserve the *status quo*, plaintiff seeks an order temporarily modifying control of and prohibiting defendants from transferring use or control of their YouTube channels being used and controlled by defendants. Plaintiff also seeks an order restraining defendants' assets, including specifically (1) funds paid to or due in the future to the defendants for YouTube advertising revenue within the control of YouTube and Google LLC, and (2) funds in the possession of or transmitted through electronic funds transfer services, foreign banks and domestic banks, payment service providers and money transfer services that defendants use to transfer funds to themselves or others from their Google AdSense accounts.

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<sup>1</sup> See *Talavera Hair Prods., Inc. v. Taizhou Yunsung Elec. Appliance Co., Ltd.*, No. 18-CV-823-JLS (JLB), 2018 U.S. Dist. LEXIS 199020 (S.D. Cal. May 10, 2018) (Order Granting Ex Parte Application for Entry of Temporary Restraining Order); *Gucci Am., Inc. v. Los Altos Boots, Inc.*, No. CV 14-06680 BRO (AJWx), 2014 U.S. Dist. LEXIS 190411 (C.D. Cal. Aug. 27, 2014) (same); *Cisco Sys. v. Shenzhen Usource Tech. Co.*, No. 5:20-cv-04773-EJD, 2020 U.S. Dist. LEXIS 127509 (N.D. Cal. July 20, 2020) (same); *Feldenkrais Guild of N. Am. v. Wildman*, No. 18-cv-02340-YGR, 2018 U.S. Dist. LEXIS 73714 (N.D. Cal. May 1, 2018)(same).

1 Defendants are foreign nationals operating online residing in nations with weak legal  
2 regimes. Once they become aware of litigation against them, defendants will change the ownership  
3 or modify their YouTube channels and content, change payment accounts, redirect traffic to other  
4 accounts, and transfer assets and ownership of the YouTube and AdSense accounts, and thereby  
5 thwart the Court's ability to grant meaningful relief. (Rollin Decl. ¶¶ 7, 10, 12).

6 Here, an interim order prohibiting Defendants from transferring their YouTube channels,  
7 AdSense accounts, and freezing their assets in those accounts preserves the *status quo*, and ensures  
8 that this Court, after fully hearing the merits of this action, will be able to afford plaintiff full relief.  
9 *See International Star Class Yacht Racing Ass'n v. Tommy Hilfiger USA, Inc.*, 80 F.3d 749 (2d Cir.  
10 1996); *SEC v. ETS Payphones*, 408 F.3d 727, 735 (11th Cir. 2005) (finding it proper to restrain all of  
11 the defendant's assets, because it was necessary to preserve sufficient funds for the potential  
12 disgorgement in the case). *See also* cases cited at footnote 1 above.

13 Courts may issue broad asset restraints to preserve the availability of permanent relief,  
14 including assets that are not directly traceable to the fraudulent activity that serves as a basis for the  
15 equitable relief requested. *See Levi Strauss & Co.*, 51 F.3d at 987-88 (upholding asset restraint,  
16 including assets not linked to the profits of the alleged illegal activity, noting the defendants may  
17 request the court exempt any particular assets); *Kemp v. Peterson*, 940 F.2d 110, 113-14 (4th Cir.  
18 1991) (district court may restrain assets not specifically traced to illegal activity).

19 Moreover, to provide complete equitable relief, courts have granted such orders without  
20 providing notice to the defendants. Specifically, federal courts have held that where advance notice  
21 of an asset restraint is likely to cause a party to alienate the assets sought to be restrained, a  
22 temporary restraining order may be issued *ex parte*. *See F.T. Int'l Ltd v. Mason*, 2000 WL 1514881  
23 \*3 (E.D. Pa. 2000) (granting *ex parte* TRO restraining defendants' bank accounts upon finding that  
24 advance notice would likely have caused the defendants to secret or alienate funds); *CSC Holdings,*  
25 *Inc. v. Greenleaf Elec., Inc.*, 2000 WL 715601 (N.D. Ill. 2000) (granting *ex parte* TRO enjoining  
26 cable television pirates and restraining pirates' assets).

27 This Court has broad authority to grant such an order. The Supreme Court has provided that  
28 district courts have the power to grant preliminary injunctions to prevent a defendant from

transferring assets in cases where an equitable interest is claimed. *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). In light of the illicit nature of the infringement business and the ability of infringers to practically eliminate their evidentiary trails by conducting their business entirely over the Internet, courts in the Eleventh Circuit, among others, have particularly noted the significance of such asset restraints in cases involving infringing defendants. *Levi Strauss & Co.*, 51 F.3d at 987; *Reebok Int'l Ltd. v. Marnatech Enter.*, 737 F. Supp. 1521 (S.D. Cal. 1989), *aff'd*, 970 F.2d 552 (9th Cir. 1992).

In this case, Defendants' blatant violations of federal copyright laws warrant an *ex parte* order restraining the transfer of their ill-gotten assets. Moreover, as defendants' businesses are conducted anonymously over the Internet, Plaintiff has additional cause for *ex parte* relief, as defendants may easily secret or transfer their assets without the Court's or plaintiff's knowledge.

#### **D. A Bond Should Secure the Injunction.**

Because of the strong and unequivocal nature of plaintiff's evidence of infringement, plaintiff respectfully requests this Court require it to post a bond of no more than five thousand dollars (\$5,000.00), subject to increase at the Court's discretion should an application be made in the interest of justice. The posting of security upon issuance of a temporary or preliminary injunction is vested in the Court's sound discretion. Fed. R. Civ. P. 65(c).

#### **IV. CONCLUSION**

In view of the foregoing, plaintiff respectfully requests this Court grant this motion defendants identified on Schedule "A" to the complaint, and schedule a hearing on Plaintiff's motion for a preliminary injunction. Plaintiff respectfully requests the Court permit the parties, including witnesses, to appear and testify as necessary telephonically or by remote video at the hearing on plaintiff's motion for a preliminary injunction, in accordance with the administrative orders of this Court. A proposed order has been submitted by counsel to chambers consistent with this motion.

DATED: August 23, 2023

Respectfully submitted,

/s/ Matthew L. Rollin

MATTHEW L. ROLLIN

**SRIPLAW, P.A.**

*Counsel for Plaintiff Viral DRM LLC*

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